

TIVERTON ZONING ORDINANCE

ARTICLE XXII. LOW AND MODERATE INCOME HOUSING**Section 1. Statutory authority and purpose.**

a. In accordance with RIGL ch. 45-53, the Low and Moderate Income Housing Act, the purpose of this article is to provide opportunities for the establishment of low and moderate income housing for both individuals and families in the town. To address the need for affordable, accessible, safe and sanitary housing for citizens of low and moderate income, this article shall serve to regulate procedures for the application of low and moderate income housing projects under the provisions of the state law, and to establish incentives for the provision of such housing.

b. In keeping with the goals and objectives of the town comprehensive community plan, low and moderate income housing shall be provided in a manner that maintains the character of the community and is commensurate with the ability of the town to provide good quality and cost effective services to its residents. In meeting the needs for affordable housing, priority consideration shall be given to the retrofitting of existing dwellings and the assimilation of low and moderate income housing into existing developments and neighborhoods.

Section 2. Definitions.

For the purposes of this article, the following terms shall have the following meanings:

- a. *Affordable housing plan*: The component of the housing chapter of the Tiverton Comprehensive Community Plan that is developed to meet housing needs in the town, including that for low and moderate income residents, and is prepared in accordance with guidelines adopted by the State Planning Council.
- b. *Completed application*: A single application consisting of all forms, accompanying documents, exhibits and fees required pursuant to RIGL ch. 45-53, and section 5 of this article, submitted to request relief from the provisions of local ordinances in lieu of separate applications to the applicable local boards.
- c. *Comprehensive permit*: A single application to build low and moderate-income housing in lieu of separate applications to applicable boards.
- d. *Consistent with local needs*:
 - (1) Local zoning and land use ordinances, requirements and regulations are considered consistent with local needs if they are reasonable in view of the state needs for low and moderate income housing; consider the number of low income persons in the town; are needed to protect the health and safety of the occupants of the proposed housing or of the residents of the town; promote better site and building design in

relation to the surroundings or preserve open spaces; and if they are applied as equally as possible to both subsidized and unsubsidized housing.

- (2) Local zoning or land use ordinances, requirements or regulations are deemed reasonable if:
 - (a) The number of low and moderate income housing units (defined below) are in excess of ten percent of the total number of year-round housing units in town, as calculated on an annual basis by the Rhode Island Housing and Mortgage Finance Corporation (RIHMFC); or
 - (b) The housing element of the town comprehensive community plan provides for low and moderate income housing units in excess of ten percent of the year-round total housing units, and the local ordinances, requirements and regulations are in place to promulgate the plan.
- e. *Denial:* The planning board refuses to grant a comprehensive permit, or extends the public hearing without reasonable cause.
- f. *Local board:* The planning board, zoning board of review, building official, zoning officer or any other boards or officials having the power to enforce land use regulations or to supervise the construction of buildings.
- g. *Low and moderate income:* Income as those terms are defined by the state or federal government program providing the subsidy for the proposed low or moderate income housing.
- h. *Low or moderate income housing:* Any housing or community residence (as defined in Article II):
 - (1) Subsidized by the federal, state or municipal government under any program to assist the construction or rehabilitation of low or moderate income housing, as defined in the applicable federal or state statute, that will remain affordable for 99 years or such other period that is agreed to by the applicant and the town, but shall not be less than 30 years from initial occupancy through a land lease and/or deed restriction, and built or operated by:
 - (a) Any public agency or nonprofit organization or limited equity housing cooperative, or
 - (b) A private developer of low or moderate income housing;
 - (2) In which any non-residential component of the proposed development is secondary to the overall proposal, provided the non-residential component does not exceed that allowed under the funding source or 25% of the gross square footage of the proposed development, whichever is lower.

- i. *Municipal government subsidy*: Assistance that is made available through a town program to make housing affordable, as affordable housing is defined above. Such assistance may include but not limited to: direct financial support; waiver of fees and charges; approval of density bonuses and/or internal subsidies; and any combination of forms of assistance.
- j. *State Housing Appeals Board*: The board which hears appeals of denials or conditioned approvals from applicants filing an applications for a comprehensive permit to construct or rehabilitate low or moderate income housing under the provisions of RIGL ch. 45-53.
- k. *Subsidized housing*: Housing which receives any direct or indirect municipal, state or federal financial assistance which reduces the cost of the development and results in the creation of affordable housing units for low and moderate income families.

Section 3. Comprehensive permit.

- a. The town planning board shall have the power to issue a comprehensive permit for a qualifying low and moderate-income housing project submitted under the provisions of RIGL ch. 45-53, in lieu of separate applications to local boards who would otherwise act with respect to such project.
- b. The planning board shall have the right to attach to the comprehensive permit such reasonable conditions and requirements with respect to the site plan, building density, setbacks, height, size, shape, building materials, landscaping, drainage and parking consistent with the need to protect the health and safety of the occupants of the proposed housing and/or of the residents of the town.
- c. The planning board shall have the authority to limit the annual total number of dwelling units in comprehensive permit applications from for-profit developers to an aggregate of one percent (1%) of the total number of year-round housing units in Tiverton, as recognized in the affordable housing plan and notwithstanding the timetables set forth in said plan, the planning board also shall have the authority to consider comprehensive permit applications from for-profit developers, which are submitted pursuant to this Article, sequentially in the order in which they are submitted.

Section 4. Eligible applicants and projects.

- a. Applicants eligible to file a comprehensive permit for approval of construction or rehabilitation of low or moderate-income housing that will remain affordable for 99 years or such other period that is agreed to by the applicant and the town, but shall not be less than 30 years from initial occupancy through a land lease and/or deed restriction, are:
 - (1) Any public agency, nonprofit organization or limited equity housing cooperative proposing to build or rehabilitate low or moderate-income housing; or

- (2) Any private developer proposing to build low or moderate income housing.
- b. In the case of private developers, a monitoring entity shall be identified with the capacity and the procedures in place to monitor the affordability of the project for a period of not less than 30 years from the initial occupancy, pursuant to a list of responsible monitoring entities and/or criteria for monitoring published by the R.I. Housing and Mortgage Finance Corporation.
- c. Projects are eligible if sponsored by an eligible entity and meet the eligibility requirements for a subsidy from the municipal, state or federal government under any program to assist the construction or rehabilitation of low and moderate income housing.
- d. To assist an applicant and to determine if all requirements, including eligibility, have been met prior to submission of a comprehensive permit application, pre-application conceptual review and eligibility determination meetings shall be scheduled with the administrative officer of the planning board, as identified in the town land development and subdivision regulations. The administrative officer shall schedule a pre-application meeting, which may include representation from the planning board and other local boards, or consist of a meeting with the entire planning board, within 30 days of the request from the applicant.

Section 5. Application requirements.

- a. A completed application to the planning board for a comprehensive permit to construct a low or moderate income housing project shall be submitted to the administrative officer. The application shall include the submission of 25 copies of the following documents:
 - (1) A completed application form as provided by the administrative officer which includes specific identification of all relief requested from the provisions of the town zoning ordinance and/or the town land development and subdivision regulations.
 - (2) A report addressing how the proposed project is consistent with local needs, including but not limited to, needs identified in the affordable housing plan, the comprehensive plan, and with any local zoning and land use ordinances, requirements and regulations enacted to address affordable housing needs in town.
 - (3) Written evidence of site control or ownership.
 - (4) Written evidence of eligibility for a municipal, state or federal subsidy, including an application in such form as may be prescribed for a municipal government subsidy, or a letter of eligibility issued by the Rhode Island Housing Mortgage Finance Corporation, or in the case of projects primarily funded by the U.S. Department of Housing and Urban Development or other state or federal agencies, an award letter indicating the subsidy, as well as a timetable for the expected availability of the funding.

- (5) Written evidence of incorporation and/or non-profit status of the applicant and operator of the facility, as applicable.
 - (6) Written evidence of a monitoring agency with the capacity and the procedures in place to monitor the affordability of the project for a period of not less than 30 years from the initial occupancy, as applicable.
 - (7) Proposed rental rates or sales prices to be charged for all housing units in the proposed development.
 - (8) A sample land lease or deed restriction with affordability liens that will restrict use of the housing units as low or moderate income housing in conformance with the guidelines of the agency providing the subsidy, but for a period of not less than 30 years.
 - (9) A financial pro-forma for the proposed development.
 - (10) A proposed time table for the commencement of construction and completion of the project.
- b. A completed application for a comprehensive permit to construct a low or moderate income housing project shall also include 25 copies of the following plans and supporting materials:
- (1) Site development plans as required for a master plan submission for a major land development or major subdivision plan under the provisions contained in the town land development and subdivision regulations (see master plan checklist contained in the subdivision regulations).
 - (2) Scaled architectural drawings including floor plans of typical units, typical elevations and sections, identifying construction type and exterior finish materials, signed and certified in accordance with the state building code.
 - (3) A tabulation of proposed buildings by type and size (number of bedrooms and floor area), building lot coverage (total footprint) and percentage of total parcel to be occupied by buildings and paved areas, as well as identification of permanent open space areas.
 - (4) Signage plan, including any entrance signage, street name signs and private development signs, if applicable.
 - (5) Lighting plan, including frequency, style and intensity of proposed street and parking lot lighting and exterior building lighting.

- c. The applicant shall also submit the filing fee as listed in the current fee schedule for the town as adopted by the town council. In addition to the filing fee, the applicant shall be responsible for all administrative costs incurred by the town, including legal advertisement and stenographic services. The applicant may also be assessed a project review fee to allow the town to offset the costs of professional and expert review of the proposed development, provided however, such fee shall not exceed the actual costs incurred by the town.
- d. Within 30 days of receipt of submitted plans and documentation for a comprehensive permit, the administrative officer shall certify the application as either complete or incomplete. Incomplete applications shall be returned to the applicant or its authorized agent with instructions for completion. The time period will be deemed stopped upon the issuance of a certificate of incompleteness and will recommence upon the resubmission of a corrected application; however the administrative officer shall have no less than 14 days from the date of its resubmission to certify a corrected application as complete or incomplete.
- e. Notwithstanding the submission requirements set forth in this section, the planning board may request additional reasonable documentation throughout the public hearing (see below), including opinions or statements from other local boards, or from outside experts.

Section 6. Review procedures.

- a. Upon the issuance of a certificate of completeness for a comprehensive permit, the planning board shall immediately notify each local board, as applicable, as well as the town council, of the filing of the application along with a copy of the application.
- b. Public notice for all public hearings will be the notice required for a preliminary plan under the provisions contained in the town land development and subdivision regulations. The cost of public notice and mailings shall be borne by the applicant.
- c. For a comprehensive permit application involving a minor land development and/or minor subdivision, the planning board shall, within 30 days of the issuance of a certificate of completeness, hold a public hearing, and within 95 days of the issuance of a certificate of completeness, render a decision.
- d. For a comprehensive permit application involving a major land development and/or major subdivision, the planning board shall hold a public hearing, and within 120 days of the issuance of a certificate of completeness, or within such further amount of time as may be agreed to by the board and the applicant, render a decision.
- e. Following master plan review, a preliminary plan shall be submitted and review conducted according to the appropriate sections of the town land development and subdivision regulations.

- f. Following preliminary plan review, a final plan shall be submitted and review conducted according to the appropriate sections of the town land development and subdivision regulations.
- g. Vesting of approvals at the master and preliminary plan stages of review shall be in accordance with the appropriate sections of the town land development and subdivision regulations. Following final plan approval, a comprehensive permit shall expire according to the provisions of Section 9 below.

Section 7. Decision of the planning board.

- a. In rendering a decision, the planning board may take the following actions:
 - (1) Approve a comprehensive permit on the terms and conditions set forth in the application.
 - (2) Approve a comprehensive permit with conditions with respect but not limited to, the site plan, building density, setbacks, height, size, shape, building materials, landscaping, drainage and parking, in a manner that does not render the construction or operation of such housing infeasible.
 - (3) Deny a comprehensive permit only if the project is inconsistent with local needs, including but not limited to:
 - (a) The project is not in conformance with the town comprehensive community plan;
 - (b) The project is not in conformance with the affordable housing plan in the approved comprehensive plan, or with local zoning ordinances and procedures promulgated in conformance with the comprehensive plan;
 - (c) The town has low and moderate income housing units in excess of ten percent of the total year-round housing units, or has a plan for meeting this standard and the local ordinances, requirements and regulations to implement the plan; or
 - (d) The concerns for the environment and the health and safety of the occupants of the proposed housing or of the current residents of the town have not been adequately addressed.
- b. In taking final action on an application, the planning board shall make positive findings, supported by legally competent evidence on the record, on each of the following:
 - (1) The proposed development is consistent with local needs as identified in the Tiverton Comprehensive Community Plan, and in particular, the affordable housing plan as contained within the housing chapter;

- (2) The proposed development is in compliance with the standards and provisions of the town's zoning ordinance and subdivision regulations, and/or where expressly varied or waived, local concerns that have been affected by the relief granted do not outweigh the state and local need for low and moderate income housing;
 - (3) All low and moderate income housing proposed are integrated throughout the development, are similar in scale and architectural style to the market rate units within the project; and will be built and occupied prior to, or simultaneous with, the construction and occupation of the market rate units;
 - (4) There will be no significant negative environmental impacts from the proposed development as shown on the final plan, which incorporates all prior conditions for approval;
 - (5) There will be no significant negative impacts on the health and safety of current or future residents of the community, in areas including, but not limited to, safe circulation, provision of emergency services, sewerage disposal, availability of potable water, adequate surface water run-off, and the preservation of natural, historical or cultural features that contribute to the attractiveness of the community; and
 - (6) The proposed development will not result in the creation of individual lots with any physical constraints to development such that building on those lots would be impracticable.
- c. All decisions shall be recorded in the land evidence records of the town. If the comprehensive permit is for a major or minor land development plan or a major or minor subdivision, any decision must also be signed and recorded in accordance with Section 23-49 of the town land development and subdivision regulations.
 - d. No building permit shall be issued by the town building official for any unit in the proposed development until written evidence has been provided by the developer that the project has received approval for the appropriate municipal, state or federal subsidy.

Section 8. Appeals.

- a. Any person aggrieved by an approval of a comprehensive permit for the construction of a low or moderate income housing project may appeal to the Rhode Island Supreme Court, pursuant to the provisions for an appeal as set forth in RIGL ch. 45-53.
- b. An appeal of a denial of a comprehensive permit, or the granting of a permit with conditions or requirements that make the building or operation of the housing project infeasible, may be filed with the state housing appeals board, pursuant to the provisions for an appeal as set forth in RIGL ch. 45-53.

- c. The state housing appeals board shall forthwith notify the planning board and all persons entitled to notice of the filing of the appeal, and the planning board shall post the notice of appeal in the Tiverton Town Hall for a period of not less than ten days.
- d. The planning board, shall, within ten days of the receipt of such notice, transmit to the appeals board a transcript describing its decisions, the reason for the decision, who was present and a record of their vote, and the findings of fact.

Section 9. Expiration of a comprehensive permit.

A comprehensive permit shall expire unless construction is started within 12 months and completed within 60 months of final plan approval, unless a longer and/or phased period of development is agreed to by the planning board and the applicant. Low and moderate income housing units shall be built and occupied prior to, or simultaneous with, the construction and occupancy of market rate units.

Section 10. Affordable housing provisions.

All proposed housing developments in the town not eligible for the filing of a comprehensive permit and otherwise reviewed and approved according to the applicable provisions of this ordinance and the town land development and subdivision regulations, shall be subject to the following provisions:

- a. *Low and moderate housing unit set-asides.* Applicants proposing any form of residential development are encouraged to provide affordable units by making use of available subsidies for the construction of affordable housing units or by making land available for such units. Those applicants proposing a major land development or subdivision project shall submit a mandatory alternative concept plan that sets aside a minimum number of the units for the construction of low or moderate income housing. For projects consisting of single family dwelling units, the minimum number of low or moderate income units shall be 20 percent of the total number of units in the proposed development, and for projects consisting of multi-family units, the minimum number shall be 30 percent of the total. The planning board shall evaluate the alternative concept plan, including design aspects, and endorse it or reject it according to the purposes of this article and its consistency with the town comprehensive community plan.
- b. *Density bonus for low and moderate housing units.* To further the goal of providing more affordable housing in the town, a density bonus of up to 30 percent over that allowed in the zoning district in which a proposed housing development is located, may be allowed for a major land development or subdivision which sets asides the additional units or lots for construction of low or moderate income housing units. In addition, the planning board may allow duplex units as low or moderate income housing. The density bonus is granted at the discretion of the planning board which shall determine the appropriate density as a balance between the costs to the developer and the resulting provision of additional affordable housing in town. The granting of a density bonus shall be conditioned upon the following:

- (1) Calculation of allowable density (prior to the density bonus) as otherwise required in this ordinance (see Article V, Section 3.). Specific lot dimensions, including waiver of minimum lot area and/or amount of unsuitable land, shall be determined by the planning board.
 - (2) The requirement that any lot granted as a density bonus within the Watershed Protection Overlay Districts, as described in Article VIII, shall be served by an alternative de-nitrification septic system as approved by the RI Department of Environmental Management. The specific lots requiring such advanced treatment shall be determined by the planning board.
 - (3) Submittal of all appropriate documentation, including written evidence of eligibility for municipal, state or federal subsidy, and written evidence of an agency to monitor the affordability of the subsidized units for a period of not less than 30 years.
 - (4) A determination by the planning board that the increased density development is consistent with the town comprehensive community plan.
 - (5) The architecture of all housing units shall be reviewed by the planning board.
- c. No building permit shall be issued by the town building official for any unit in a proposed development that provides for low or moderate income units either as a set-aside or density bonus, until written evidence has been provided by the developer that the affordable units have received approval for the appropriate municipal, state or federal subsidy.
 - b. *Design of low and moderately priced housing units.* All low and moderate income housing units shall be consistent in external design and construction with the other units in a proposed development, and shall be integrated throughout the development.

(Adopted by TC 1-23-06)